A.A. VALIBHOY & SONS v. HABIB BANK LTD.

[O.C.J. (Rajah J.) December 1, 1983]
[Singapore – Suit No. 2988 of 1978]

Banking – Letter of credit – Sale of ship – Negotiating bank appointing issuing bank its collection agent – Appointment made without consulting seller/payee – Whether privity of contract between seller and collecting bank – Principles of – Duties, rights and liabilities of principal and sub-agent.

Contract – Agency – Letter of credit – Negotiating bank appointing issuing bank its collection agent – Appointment made without consultation with nor on instruction of payee – Whether privity of contract existed between collecting bank agent and payee – Principles – Duties and liabilities of principal and sub-agent.

Agency – Letter of credit – Negotiating bank appointing issuing bank its collection agent – Appointment made without consultation with nor on instruction of payee – Whether collecting bank agent of payee.

By a written contract dated May 6, 1976, the plaintiffs contracted to sell a ship, m.v. "Yanti" for scrapping to Silooka Steels Ltd. (the "buyer") for US$383,130/-, payment to be made by a confirmed irrevocable letter of credit. The vessel then at Colombo, Sri Lanka, was to be delivered to the buyer at Karachi. Pakistani law allowed remittance abroad of purchase price in foreign currency if a scrap vessel was imported under an approved letter of credit. However, if the importation was on a collection basis, such remittance was subject to the approval of the State Bank.

The buyer established a confirmed irrevocable letter of credit with the Defendant bank on June 11, 1976 to expire on September 24, 1976 in favour of the plaintiffs for US$383,130/-. On July 5, 1976 the buyer amended the letter of credit to allow for negotiation through Banque Nationale de Paris (Singapore) (BNP). BNP appointed the Muslim Commercial Bank (MC Bank), its Karachi correspondents, to act as its collecting agent in Karachi. Subsequently, on May 17, 1977 the Defendant Bank was substituted as BNP's collecting agent in Karachi.

On March 1, 1977 the MC Bank at the buyer's request had sent the defendants a complete set of documents ("the documents") received from BNP including a Bill of Exchange (the Bill) for the price of the vessel in US dollars, drawn by the plaintiffs on the buyer for payment to BNP, to be forwarded to the buyer strictly on payment of the Bill in US currency against delivery of the documents.

The vessel did not arrive in Karachi until May 8, 1977 due to several repairs which had to be effected on it, by which time the letter of credit had expired. The importation of the vessel was therefore treated as on a collection basis. The buyer could not remit the purchase money in US dollars without prior approval of the State Bank.

Consequently, the defendants advised the MC Bank of the need to obtain approval for payment in US dollars and requested authorisation to deliver the documents to the buyer against an equivalent Pakistani rupees payment.

On May 17, 1977, MC Bank wrote to the defendants to request that they abide by BNP's instructions for collection in US dollars and also advised that it, MC Bank, would be requesting BNP to instruct the defendants directly concerning delivery of the documents against provisional payment in Pakistani rupees.

On receipt of the letter, the defendants cabled BNP for authorisation to release the documents to the buyer against provisional Pakistani rupees deposit pending remittance and also wrote to explain in detail the circumstances necessitating the cable request.

On May 25, 1977 BNP telexed MC Bank to convey to the defendants, on BNP's behalf, that BNP was acceding to the request and the defendants could deliver the documents to the buyer/ drawee of the Bill against provisional Pakistani rupees deposit pending remittance. The defendants accordingly informed the buyer of the new arrangement. On June 23, 1977 the buyer requested the defendants to produce the original Bill of Sale dated July 30, 1976 to the Mercantile Marine Department, Karachi for inspection. The defendants complied, with the result that the vessel which had arrived on May 8, 1977 was allowed to beach.

The plaintiffs executed a second Bill of Sale dated October 26, 1977 in respect of the vessel, naming Panama as its Port of Registry, but otherwise the bill was the same in every respect as the original Bill of Sale, dated July 30, 1976.

On October 29, 1977 the buyer asked the defendants to deliver documents including the original legal Bill of Sale (July 30, 1976) to the defendants' clearing agents to finalise assessment of the vessel for customs duty by the customs authorities. The defendants in compliance eventually on November 16, 1977, sent to its clearing agents the original of the Bill of Sale dated July 30, 1976, the original of the Bill of Sale dated October 26, 1977 (amended), Memorandum of Agreement and a copy of the Invoice. These documents were returned to the defendants immediately at their request on December 14, 1977.

Meanwhile, both the plaintiffs and BNP had been in correspondence with the buyer and the defendants respectively since July 1977 to query the delay in payment.

Finally on January 1, 1978 the defendants returned all the documents including the Bill to the MC Bank as the proper non-encumbrance certificate of the vessel had not been submitted.

The defendants informed BNP by telex of the same.

On January 7, 1978, BNP sought confirmation from the defendants that at no time had they parted with the documents without receiving payment as instructed for BNP was given to understand that the buyer had already taken delivery of the vessel.

In their reply telex of January 10, 1978 the defendants informed BNP, *inter alia*, that the buyer/drawee

had neither deposited the Pakistani rupees equivalent of US$383,130/- nor taken delivery of the vessel.

The plaintiffs thereafter commenced the action, claiming, *inter alia*, that the defendants were the plaintiffs' collecting agents and as such had been in dereliction of their duties thereby causing the plaintiffs to suffer loss and damages.

Held, dismissing the action: (1) the general rule is that a principal cannot sue a sub-agent for want of privity between them. The rule will not apply where the principal was a party to the appointment of the sub-agent, or has subsequently adopted his acts, and it was the intention of the parties that privity of contract should be established between them. The right and liabilities of a sub-agent vis-a-vis the principal flow from the nature of the relationship between them, whether contractual or otherwise;

(2) the appointment of the defendants as collecting agents in Karachi was made directly by BNP, the plaintiffs' collecting bankers in Singapore, without in any way consulting the plaintiffs. The plaintiffs were not parties to nor did they have anything to do with the appointment.

(3) there being no privity of contract between the defendants and the plaintiffs, the plaintiffs could not sue the Habib Bank who were the agent of BNP, the collecting bankers in Singapore and therefore this action must stand dismissed. If the defendants had breached their duties while acting as collecting agents on behalf of BNP then the plaintiffs' remedy would lie against BNP, who themselves would have a remedy over against the defendants.

(4) in the event that there was privity of contract between the plaintiffs and the defendants, on the facts, the defendants were not in breach of their duties as collecting agents to the plaintiffs.

Cases referred to:

(1) *Mackersy* v. *Ramsays Bonars & Co* (1843) 9 Cl. & Fin. 818; 8 E.R. 628;
(2) *Prince* v. *Oriental Bank Corp.* (1878) 3 App. Cas. 325, 335 P.C.
(3) *Calico Printers' Association* v. *Barclays Bank* (1931) 145 L.T. 51 C.A.

CIVIL SUIT.

C.S. Wu for the plaintiffs.

G. Pannirselvam for the defendant.

Cur. Adv. Vult.

Rajah J.: The M.V. Yanti (the Vessel), built in happier times in England in the year 1951, was registered under the Singapore flag in 1974, but, alas, in the year following whilst trading in Asian waters, was arrested in Colombo, Republic of Sri Lanka for wages due to its crew and services rendered in Admiralty in Rem Action No. 3 of 1975 commenced in the High Court of Colombo and sold by international tender by Order of the said High Court, on June 3, 1976 (3AB5). At the time of the said arrest the owners of the Vessel were Pyramid Lines (Private) Limited of 702/703 Colombo Court, Singapore 6 and she was mortgaged by them for the sum of S$2,182,500/- to Janata Bank Limited of Bangladesh with office in London, England (Exhibit D2). Soon after the said arrest but before the said sale the mortgagees of the Vessel also commenced action against her by way of Admiralty Action in Rem No. 6 of 1975 in the same Court for the recovery of all mortgage moneys due to them under the mortgage. Amongst the tenderers for the purchase of the Vessel were the Plaintiffs whose normal business was that of a trading company and Silooka Steels Limited of Karachi, Pakistan (Silooka), carrying on the business of ship repairers and ship breakers. The Plaintiffs' tender for the Vessel at US$235,500/- was accepted by the Marshal of the Colombo High Court. It is of interest to note that there is no evidence before the Court, documentary or oral, that Silooka did "first obtain Government permission to purchase the said Vessel" (see Condition (a) of Circular No. 10 of 1975 of Government of Pakistan, Ministry of Communications (Posts and Shipping Wing) Mercantile Marine Department (2AB1; M M D Circular No. 10 of 1975).

However the Plaintiffs, even before they had successfully tendered for the purchase of the Vessel, had entered into *a written contract with Silooka dated May 6, 1976* (3AB2) for the sale by them to Silooka of "one unserviceable ship for scrapping named M.V. Yanti ... now lying at Colombo, as seen and approved by your representative to be delivered to you at Karachi Harbour for the sum of US$383,130/-. Under the said contract (1) payment was to be by a confirmed irrevocable letter of credit to be opened in favour of the Plaintiffs before June 30, 1976;

(2) the destination of the Vessel was to be Colombo/Karachi, within three months after receipt of letter of credit, and

(3) all the usual documents for scrap ship were to be provided by the Plaintiffs including Bill of Sale duly notarised and legalised by Pakistan Consul.

If a ship for scrapping purpose were to be imported into Pakistan from a foreign country under an approved letter of credit then there would be no difficulty in remitting the purchase price in foreign currency abroad provided all the conditions in the approved letter of credit had been complied with (PW 1). If, however, a ship for scrapping were to be imported into Pakistan not under an approved letter of credit but on a collec-

tion basis then the remittance could only be effected after (1) submitting all relevant import documents on the arrival of the ship at Karachi, (2) getting clearance from Customs (3AB72) and (3) finally obtaining the approval of the States Bank of Pakistan (the State Bank). It might, therefore be useful if I were to set out the full text of M M D Circular No. 10 of 1975:

"

Karachi, 22nd September 1975

CIRCULAR NO 10 of 1975
Subject: *PURCHASE OF IMPORT OF SHIPS FOR SCRAP*

In supersession of P.O M M D Circular No. 251 of 1975 issued on 4th June, 1975, the procedure to be adopted in future by Importers/Shipbreakers desiring NOC from Mercantile Marine Department for boarding/scrapping of Foreign Flag ships at Gadani Beach, purchased and imported under a valid permit, is simplified as under:

a) They should first obtain Govt permission to purchase the said vessel and obtain an import licence for the same (Photostat copy of Import Licence/Letter of Credit is to be presented to M M D);

b) To declare the ownership on the prescribed form (obtainable from M M D on payment of Rs.1.25);

c) To produce the original Bill of Sale duly notarised by a competent Notary Public and endorsed by the Pakistan Embassy along with the permission of the Government of the Port of Registry to sell the said vessel to the importers concerned;

d) To present the Ships Register to the Principal Officer, Mercantile Marine Department which will be sent by him to the Registrar of Ships of the original Port of Registry for cancellation of Registry and furnishing the transcript of Ship Register;

e) To produce permission given by the Ministry of Communications, P & S Wing, Government of Pakistan under section 289-A of M S Act 1923;

f) To ensure re-registration of the vessel at Port of Karachi and pay the usual prescribed registration fee;

g) To satisfy the P.O. M M D, Karachi that the vessel being imported is really owned by the seller signing the bill of sale.

The NOC for beaching/scrapping will not be issued by P.O. M M D, if any of the above requirements is not fulfilled. All concerned are, therefore, advised in their own interest to ensure submission of the above requirements in full so as to obtain NOC without any delay.

Sgd
PRINCIPAL OFFICER
MERCANTILE MARINE DEPARTMENT
KARACHI DISTRICT

To

All Importer/Ship-breakers
Karachi

"

Now the Safe Deposit Vault Branch of Habib Bank Limited of Karachi Pakistan (Habib Branch) who were the bankers of Silooka had agreed with Silooka to finance the purchase of the Vessel by Silooka from the Plaintiffs by granting them LIM facility (meaning Loan against Import) on the basis of a cash margin, in Pak rupees, of 25% of the purchase price, (Rs 9,53,000) paid to the Habib Bank by Silooka on June 11, 1976 (3AB9). On June 11, 1976 the Habib Bank at the request of Silooka established their confirmed irrevocable letter of credit No. 48552 (bearing expiry date September 24, 1976) in favour of the Plaintiffs, for the sum of US$383,130 for delivery of the Vessel at Karachi Harbour, (Vessel to arrive at outer anchorage not later than September 9, 1976) for scrapping, safely afloat, as per the said contract and accompanied by the documents therein stated. A copy of the said letter of credit is annexed hereto as Appendix 'A'. At this stage of the transaction the opening bank, the Habib Bank, was communicating with the Plaintiffs in Singapore through their Branch in Singapore (3AB11 & 12). On July 5, 1976 however the Habib Bank, at the request of their customer, Silooka, amended their letter of credit to the effect that negotiation through Banque National de Paris Singapore (BNP) was to be allowed. In other words BNP had on July 5, 1977 become the collecting bank of the Plaintiffs (3AB30). The Muslim Commercial Bank Limited of Karachi (M C Bank), who were the correspondents of BNP at Karachi, acted as agents of BNP for collection purposes in Karachi until March 5, 1977 (3AB73) as hereinafter appears.

Coming back to the arrested Vessel, the Registrar of the Colombo High Court, acting in the exercise of its Admiralty jurisdiction and in consideration of the sum of US$235,500 paid to the Marshal on its behalf transferred to the Plaintiffs by *a Bill of Sale dated June 28, 1976* (the Colombo Bill of Sale), with effect from June 9, 1976, all the shares in the Vessel free from encumbrances (3AB26). On the face of the Colombo Bill of Sale the Vessel carried a Singapore registration and surprisingly there is no categorical statement therein that it was the Plaintiffs who paid the US$235,500 to the Marshal.

While the Vessel was still at Colombo the Plaintiffs executed a Bill of Sale for its transfer,

dated July 30, 1976 (3AB37), naming therein Singapore as its Port of Registry, when in fact she had ceased to be, in favour of Habib Bank Limited A/C Silooka free from encumbrances, all debts and maritime liens.

The Vessel could not leave Colombo for Karachi in time to negotiate the letter of credit as it is said that she had to have repairs effected to her and that these took some four to five months to carry out. The Vessel eventually left Colombo for Karachi in January/February 1977 but she broke down en route and had to return to Colombo for yet further repairs. On the second occasion on leaving Colombo for Karachi she broke down yet again and so the Plaintiffs decided to have her towed from Colombo to Karachi to arrive there on May 8, 1977 with a consignment of about 5000 tons of scrap metal, the consignees of which were a sister company of Silooka, namely Karachi Rolling Mills Limited. On arrival at Karachi the Master of the Vessel wrote to the Habib Bank certifying the arrival of the Vessel at Karachi and confirming that she was ready for delivery to them.

On March 1, 1977 (3AB71) the MC Bank at the request of Silooka sent the Habib Bank a complete set of documents, received by the M C Bank from BNP on or before February 21, 1977 (3AB69) including a Bill of Exchange 1FBC No 14-77 dated February 24, 1977 for US$383,130 (the Bill) of which the Plaintiffs were the drawers, Silooka the drawees and BNP the payees for onward transmission by the Habib Bank to Silooka strictly on payment of the Bill in US dollars against delivery of the documents.

On March 4, 1977 (3AB72) the State Bank wrote to the Habib Bank on this matter as follows:

"We have to advise that the letter of credit in question has expired on September 24, 1976 and the shipping documents have not yet been received by you. Hence the import (of the Vessel) will be treated as *on a collection basis and the remittance will be effected after obtaining our approval and on submitting all the relevant import documents after the ship has arrived and cleared.*"

(emphasis mine).

On March 5, 1977 (3AB74) in acknowledging the receipt of the said complete set of documents Habib Bank wrote to the M C Bank, *inter alia,* as follows:

"(X) We will not be liable for any loss, damage or delay howsoever caused due to our inability to accept payments, or remit proceeds of payment offered in contravention of the Exchange/Import Control Regulations or for any other reason. We may inform you that in some contravention cases, our application to Exchange Control Authorities for approval of remittance can be considered only when Customs Authorities release the goods and issue a Bill of Entry/Certified Invoice. To enable the importers to do so, the documents after obtaining your confirmation, will have to be delivered to them against Pak rupees deposit at your entire risk and account including risk of fluctuation in Exchange Rate. Our Bank will not be held responsible if the approval for remittance is finally refused."

On March 5, 1977 (3AB75) the Habib Bank wrote to Silooka that the Bill and other documents had been received by them on a collection basis as the same could not be negotiated under the letter of credit and asked them to take immediate delivery of the relative documents against payment of the Bill in United States dollars. On April 12, 1977 (3AB77) a reminder by registered post was sent by the Habib Bank to Silooka with a copy to the M C Bank (3AB77) and a further reminder was sent on April 25, 1977 (3AB78).

On May 10, 1977 (3AB85) Habib Bank wrote to M C Bank "... In this connection we request you to please authorise us to deliver documents to party (meaning Silooka) against equivalent Pak rupees payment. On receipt of your authority documents will be delivered to party against *payment of invoice value at US$383,130 plus charges of US$15/- in equivalent Pak rupees 9.9463 plus your commission .0025.* Necessary import licence and other documents are lying pending with us and the same will be forwarded to you along with our payment order for getting necessary approval from BNP for remittance purpose." It will be noted that is the second mention by the Habib Bank of payment of the Bill in Pak rupees, the first being in 3AB74 dated March 5, 1977. Nevertheless the Habib Bank made yet another request on May 14, 1977 to Silooka to take delivery of documents against payment in US dollars (3AB89) and this was to be their last attempt to call upon Silooka to effect payment of the Bill in US dollars.

On May 17, 1977 (3AB92), that is to say some ten days after the arrival of the Vessel at Karachi, the M C Bank wrote to the Habib Bank as follows:

"We are in receipt of your letter No MAA/IFLC/22 dt: 10.5.77 and advise you that these documents were received from Banque Nationale de Paris, Singapore on collection. Since the relative letter of credit was established by you, hence we feel under the existing Import Trade Regulations of our country, that these documents should be handled

by you entirely. Thus while waiving our demand for payment of collection commission to us, we are sending herewith a photocopy of schedule of our aforesaid Foreign Correspondent containing detailed instructions to handle these documents.

Please therefore handle these documents directly at your end and dispose of the payment on collection from drawees in accordance with the instructions of the collecting bank in Singapore. Meanwhile we are sending a copy of this letter together with a copy of your letter referred to above to the Banque Nationale De Paris, Singapore requesting them to instruct you directly concerning delivery of documents against provisional payment in Pak rupees."

On receipt of this letter the Habib Bank wrote to BNP on the same day (3AB91) *inter alia* as follows:

"... We may inform you that in some contravention cases, our application to Exchange Control Authorities for approval of remittance can be considered only when Customs Authorities release the goods and issue a Bill of Entry/ Certified Invoice. To enable the importers to do so, the documents after obtaining your confirmation, will have to be delivered to them against Pak Rupee deposit at your entire risk and account including risk of fluctuation in Exchange Rate. Our Bank will not be held responsible if the approval for remittance is finally refused."

They also cabled BNP on the same day (3AB90) as follows:

"Our 1FBC LC 48552 your BC 300225 refer documents valuing US$383,130 received through Muslim Bank (.) Documents presented to us to be dealt entirely at our end(.) Authorise us under authenticated cable message to deliver documents to party against provisional Pak rupees deposit pending remittance (.) Our detailed letter airmailed (.) Documents lying pending with us entirely at your risk and responsibility (.) Remittance can be effected only on getting approval from exchange centre authorities (.) Approval not possible before clearance.

VAULTHABIB"

On May 25, 1977 (3AB96) BNP, the collecting bank in Singapore, telexed M C Bank to inform the Habib Bank on their behalf that they could now *deliver the documents to Silooka, the drawees, of the Bill against provisional Pak rupees deposit pending remittance* (emphasis mine) rather than in US dollars; on May 30, 1977 the Habib Bank informed Silooka of this new arrangement (3AB97).

On July 3, 1977 (3AB106) the Plaintiffs telexed Silooka direct to the effect that remittance of US$383,130 had not yet been received by them in spite of the fact that the Vessel had reached Karachi Port safely and notice of readiness for delivery of the Vessel had been given by the Master to them and their bankers (the Habib Bank) in May 1977 and warned Silooka that if remittance were not made through the bankers within three days they (the Plaintiffs) would cancel the contract and take the necessary steps to re-take the Vessel at Silooka's risk and cost.

After receiving their instructions from BNP to deliver documents to Silooka against provisional Pak rupees deposit pending remittance, the Habib Bank replied to the Plaintiffs' telex (3AB106) by cable addressed to BNP dated July 7, 1977 (3AB109) that "proceeds not yet remitted for want of necessary approval from exchange control authorities. Approval expected after formal clearance of ship". The next communication on the subject of collection was on August 1, 1977 (3AB114), this time from BNP to the Habib Bank as follows:

"Your IFBC 14-77 (the Bill) Drawers (the Plaintiffs) request you to remit proceeds to NY (New York) within seven days under your cable advice to us or they will arrange to send captain and crew to take possession of the vessel and bring her back to Singapore. STOP. Please treat this as urgent and cable compliance".

The contents of this telex was sent by the Habib Bank to Silooka on August 3, 1977 (3AB115) and Silooka was asked for their immediate instruction for onward transmission of such instruction to BNP.

On August 25, 1977 (3AB127) the Habib Bank wrote BNP in answer to their telex of August 1, 1977 (3AB114) that Silooka "are unable to make arrangements for remittance at the moment due to various procedural complications in clearance of ship". They also went on to say "that we are unable to make remittance without prior approval of our exchange control authorities. The Control authorities have expressed their inability to accede request of party for remittance in anticipation of clearance of vessel."

On September 12, 1977 (3AB133) Habib Bank wrote by registered letter to Silooka to the effect that

(1) payment on the bill was still outstanding, and

(2) that this situation could not go on for an indefinite period and notified them that, unless immediate arrangements for retirement of the Bill against cash payment (this would have

been in Pak rupees) were made, they would be constrained to return all shipping documents to the M C Bank for onward transmission to BNP.

This letter was copied to their Head Office and to the M C Bank.

To the Habib Bank's letter of September 12, 1977, Silooka replied on September 19, 1977 (3AB135), *inter alia,* as follows:-

"We have to request you that the LIM facility may kindly be restored at the earliest and the original documents may be kept pending till the approval of the State Bank for remittance is received."

On September 27, 1977 (3AB138) the State Bank wrote to the Habib Bank that the remittance on account of the Vessel will be considered by them on submission of its exchange control copy of the relative Bill of Entry etc. and other information as already advised.

On October 10, 1977 (3AB141) Silooka wrote to the Habib Bank requesting them "to kindly allow us to draw an amount of Rs 5,70,000 from the above Account (Margin Account) which shall be re-deposited with you at the time of your filing application to the State Bank for obtaining their approval for remittance" and on October 12, 1977 this amount was withdrawn by Silooka (3AB9) and on December 23, 1977 a further sum of Rs 9,53,000 was drawn from the Margin Account (3AB9).

On October 17, 1977 (3AB142) the State Bank then wrote to the Habib Bank advising them to hold the amount of the payment until further instructions.

On October 27, 1977 (3AB146) BNP telexed the Habib Bank urgently asking them as to what was the fate of this long outstanding collection and warned that, should there be any further delay in the transfer of proceeds of this collection to them, the drawers (the Plaintiffs) were contemplating taking legal action as may be necessary for the transfer of proceeds or for the return of the Vessel to Singapore.

On January 1, 1978 (3AB170A) the Habib Bank returned all the documents to M C Bank including the Bill for the reason "that proper non-encumbrance certificate issued by the concerned authority of the country where the ship has been registered has not been submitted" and informed BNP by telex dated January 2, 1978 (3AB171) of this.

On January 7, 1978 (3AB174) BNP telexed the Habib Bank, *inter alia,* as follows:

"We understand from drawers (Plaintiffs) that drawees (Silooka) have already taken delivery of the vessel 'Yanti' against payment in Pakistani rupees equivalent to US$383,130. Therefore unable to understand how documents can now be in your hands as you are supposed to have delivered them against payment in Pakistani rupees. STOP. Please therefore confirm that at no time you had parted with documents without receiving payment as instructed. STOP. Please telex urgently your reply."

To this telex the Habib Bank telexed BNP on January 10, 1978 (3AB177) as follows:

"Refer your telex dated January 7, 1978 re our 1FBC 14-77 STOP. Documents returned to Muslim Commercial Bank as the same were received from them STOP *Drawee had not deposited Pak rupees equivalent to US dollars 383,130/-* STOP Documents were never delivered to the drawee STOP *Drawee have not taken delivery of the vessel.* Clearance orders withheld by Ministry of Communications (Ports and Shipping Wing) unless and until decided by Baluchistan High Court regarding its stay orders STOP For any further information please contact Muslim Commercial Bank directly STOP".

Although the LIM facility had come to an end with the lapse of the letter of credit yet the 25% margin paid by Silooka under the letter of credit still remained in the Margin Account. On May 20, 1977 (1AB22) this facility was again available for a period of six months at 40% margin of C & F value and on May 30, 1977 (3AB97) the Habib Bank asked Silooka to deposit necessary margin with them for clearance through LIM account. The additional 15% margin was paid in by Silooka on June 23, 1977 (3AB135). This facility was withdrawn on September 3, 1977 (1AB39) and restored again on September 24, 1977 (1AB44).

On June 23, 1977 (3AB98) Silooka requested the Habib Bank to produce to the Mercantile Marine Department, Karachi for inspection the original Bill of Sale (July 30, 1976), which the Habib Bank did and this action on the part of the Habib Bank resulted in beaching permission being granted by the Department to Silooka on June 25, 1977 (3AB100). The Vessel, however, for some reason that did not emerge during the course of the hearing, was not beached at Gadani beach until September 10, 1977.

On August 15, 1977 (3AB116) the Federal Investigation Agency of Pakistan (FIA) which had by then commenced an inquiry into the circumstances leading to the arrival of the Vessel in Pakistan, wrote to the Habib Bank to send them immediately attested copies of all documents and

correspondence related to the Vessel. This the Habib Bank, perhaps at some disquiet to themselves, refused to do without proper authority of a Court of Law (3AB120).

The Plaintiffs executed a second Bill of Sale (3AB144) in respect of the Vessel dated October 26, 1977 naming Panama as its Port of Registry in favour of Habib Bank Limited A/C Silooka free from encumbrances, all debts and maritime liens. This Bill of Sale was in every respect the same as the first Bill of Sale (3AB37) except for the Vessel's Port of Registry. In fact on October 26, 1977 the Vessel had, as from September 21, 1977, ceased to be on the Panamanian Register (3AB136) and from then up to the date of these proceedings the Vessel was stateless.

On October 29, 1977 (3AB147) Silooka asked the Habib Bank for documents including original legal Bill of Sale (July 30, 1976) to be delivered to the Clearing Agents of the Habib Bank, namely M S H Agency, for finalisation of the assessment of the Vessel for customs duty by the Customs authorities. In response to this request the Habib Bank sent the M S H Agency a photostat copy of the legal Bill of Sale and Invoice (3AB148), but the latter wanted the original Bill of Sale as well as the Memorandum of Agreement (3AB150). So the Habib Bank wrote to Silooka on November 11, 1977 for permission to let M S H Agency have these two documents (3AB152) which permission was granted by Silooka on November 14, 1977 (3AB154). On November 16, 1977 (3AB154A) the Habib Bank sent M S H Agency the following documents:-

(1) original Bill of Sale dated July 30, 1976

(2) original Bill of Sale dated October 26, 1977 (amended)

(3) Memorandum of Agreement

(4) one copy Invoice.

On November 19, 1977 M S H Agency sent documents (1), (2) and (4) above to the Purbani Traders, the clearing agents of Silooka for use by them for the purpose of completion of customs formalities only (Exhibit P2).

In their letter of December 14, 1977 (3AB159) the Habib Bank called upon M S H Agency to return as a matter of urgency the documents sent to them on the November 16, 1977 (3AB154A) and this was done immediately after the recall by the M S H Agency of the documents from the Purbani Traders on December 14, 1977 (Exhibit P4).

It was in these circumstances that the Plaintiffs, a Singapore registered company, commenced an action in Singapore against the Defendants, a branch of the Habib Branch of Pakistan carrying on the business of banking in Singapore. No objection was taken by the Defendants to such an action being heard in Singapore in such circumstances.

The Plaintiffs in their Re-Amended Amended Statement of Claim re-dated November 11, 1983, allege:

(1) that the Defendants had released and/or utilised the said documents in consequence of which beaching and transfer of the said Vessel to Silooka were effected;

(2) that the Defendants had failed to remit to the Plaintiffs or BNP the said purchase price of US$383,130.00 notwithstanding a demand for payment;

(3) that the Defendants by so failing had converted to their own use and wrongfully deprived the Plaintiffs of the said purchase price, whereby the Plaintiffs have suffered damage, and

(4) that alternatively the Defendants were the Plaintiffs' Karachi Agents and were in breach of their duties as the Plaintiffs' Agents in that they had failed or refused to collect or pay over and/or refused to pay over to the Plaintiffs the monies due in respect of the said purchase price, by reason of which breach, the Plaintiffs have suffered loss and claim against the Defendants the sum of US$383,130, the purchase price of the Vessel, under one or other of the three following heads: –

(i) that the Defendants have converted to their own use and wrongfully deprived the Plaintiffs of the said purchase price;

(ii) that the said purchase price is payable to the Plaintiffs by the Defendants as monies had and received by the Defendants for the Plaintiffs' use, and

(iii) damages for breach of contract valued at the full amount of the purchase price

which the Plaintiffs ought properly to have received from the Defendants for the sale of their Vessel.

To these the Plaintiffs' allegations and claims, the Defendants, to summarise their Defence, respond by saying that:–

(i) there was no banker-customer or other relationship between the Plaintiffs and the Defendants;

(ii) the actions complained of by the Plaintiffs were not due to anything done or not done by the Defendants but due to what the Plaintiffs, the sellers of the Vessel, and Silooka, the purchasers thereof, did not do; and

(iii) the Plaintiffs suffered no loss by reason of anything done or not done by the Defendants.

In his final submission to the Court, Mr. C S Wu, Counsel for the Plaintiffs, conceded and in my view quite rightly, that on the fall of the evidence in Court the Plaintiffs' claim for conversion or for money had and received could not be sustained as there had never been any money held for the Plaintiffs by the Defendants. He submitted that there is therefore only one issue before the Court – namely, damages for breach of contract. I agree and I proceed to determine the case in that wise.

In their Statement of Claim in its final form the Plaintiffs allege, more particularly, that it was as the result of the letter dated May 17, 1977 from the M C Bank to the Habib Bank (3AB92) that the latter became the Plaintiffs' Karachi Agents for the collection of the purchase price in Pak rupees from Silooka against release of documents to them. In his submission Mr. Wu maintained that on the facts of this case there had been established a collecting agency as from May 26, 1977 to January 1, 1978 on a contractual basis between the Plaintiffs and the Habib Bank and that by virtue of this contractual relationship the Habib Bank are the sub-agents of the Plaintiffs.

The main complaint against the Habib Bank is that they were in dereliction of their duties as collecting agents of the Plaintiffs in that

(i) before getting full provisional Pak rupees deposit pending remittance from Silooka, the drawees, they had allowed certain documents to be used by Silooka repeatedly on their behalf without at any time requesting or obtaining the permission of BNP, and

(ii) this is a minor key, that they did not, during the entire period of their collection agency, i.e. from May 25, 1977 to January 1, 1978, request payment of Silooka of the provisional sum in Pak rupees except on one occasion namely September 12, 1977 (3AB133.)

The Defendants take up the position, and this they had maintained all along that "there was no banker and customer or other relationship between the Plaintiffs and the Habib Bank". Mr. Selvam, Counsel for the Defendants, does not accept Mr. Wu's proposition that, in the circumstances of the instant case, the Habib Bank are the Plaintiffs' Karachi Agents for collection of the purchase price either in US dollars or Pak rupees. He contends that the Habib Bank had no contractual nexus, whatsoever, with the Plaintiffs. However he freely admits that the Habib Bank are the collecting agents of BNP directly but says that on the facts and circumstances of this case they were not in dereliction of their duties as such collecting bankers.

It seems to me that on these submissions I have to determine the following questions:-

(1) Were BNP the collecting agents of the Plaintiffs in Singapore?

(2) Were the MC Bank the correspondents of the BNP in Karachi?

(3) Were the Habib Bank acting as collection agents on behalf of the M C Bank in Karachi before May 25, 1977?

(4) Were the Habib Bank acting as collection agents in Karachi on behalf of BNP from May 25, 1977 to January 1, 1978?

If the answers to the foregoing four questions are in the affirmative.

(5) Were the Habib Bank yet the Plaintiffs' Karachi Collecting Agents as claimed by the Plaintiffs in their final amended Statement of Claim?

(6) If the Habib Bank are agents of BNP for collection in Karachi are they, on the facts of the instant case, the sub-agents of the Plaintiffs?

In *Paget's* Law of Banking (the 1982 Edition) in the chapter 'The Collecting Banker' the authors have this to say: "If the banker employs a sub-agent for the purpose of collecting bills he is responsible to the customer for negligence on the part of such sub-agent and for moneys received by such sub-agent, apart from any question of account between the banker and sub-agent" (page 370 para 1) and cite the cases of *Mackersy* v. *Ramsays Bonars & Co;*(1) *Prince* v. *Oriental Bank Corp;*(2) *Calico Printers' Association* v. *Barclays Bank.*(3) In *Halsbury's* Law of England Vol 3. Banking (4th Edition) in Para 106 which deals with the duties and liabilities of a banker collecting bills, there appears the statement that "If the banker employs a sub-agent for collection, he is responsible to the customer for negligence on the part of the sub-agent, but has a remedy over against the sub-agent". In support of this statement the abovenamed three cases are relied upon. In *Halsbury's* Laws of England on Agency Vol 1 (4th Edition) at paragraphs 753 to 755 the position of a sub-agent is discussed:—

753 – *Privity between Principal and Sub-agent*

As a general rule there is no privity of contract between the principal and a sub-agent, the sub-agent being liable only to his employer, the agent. The rule will not apply where the principal was a party to the appointment of the sub-agent, or has subsequently adopted his acts, and it was the intention of the parties that privity of contract should be established between them.

754 – *Classes of Sub-agents*

There may, therefore, be said to be three classes of sub-agents:

(1) those employed without the authority, express or implied, of the principal, by whose acts the principal is not bound;

(2) those employed with the express or implied authority of the principal, but between whom and the principal there is no privity of contract;

(3) those employed with the principal's authority, between whom and the principal there is privity of contract, and a direct relationship of principal and agent is, accordingly, established.

For the acts and defaults of the first two classes the agent is responsible to the principal; in the third case the sub-agent has both the rights and the liabilities of an agent vis-a-vis the principal.

755 – *Remuneration and Liability of Sub-agent*

The sub-agent, not as a rule being brought into contractual relationship with the principal, must look to the agent for his remuneration and indemnity. Thus, where an agent for the transport of goods without authority delegated his entire duties, it was held that the person performing them was not entitled to recover for his services against the principal.

Similarly, as a general rule, a sub-agent is accountable only to the agent who employs him, and that agent in turn to his principal, so that a sub-agent taking over the conduct of the principal's business is not liable to render an account to the principal. Where, however, there is privity between the principal and the sub-agent, or sufficient knowledge by the sub-agent concerning the true position of the parties for some fiduciary obligation to be implied, the sub-agent may be held liable to the principal for money had and received to the principal's use from third parties.

The general rule is that a principal cannot sue a sub-agent for want of privity between them and this was affirmed in the abovementioned case of *Mackersy* v. *Ramsays.* In that case

"two bills payable in India had been deposited by Mr Mackersy with Messrs. Ramsays, who were bankers at Edinburgh, to collect for him. They sent the bills to their English correspondents, Coutts & Co., and Coutts & Co. remitted them to their own correspondents, one to Messrs. Palmer and the other to Messrs. Alexander & Co. in India, to collect. Both the bills were paid in India, one to Messrs. Palmer and the other to Messrs. Alexander, but both these houses failed and did not remit to Coutts. The House of Lords decided that Mr. Mackersy was entitled to recover the amount of the bills from Messrs. Ramsays, his own bankers in Edinburgh, as the principal agents, inasmuch as they were liable to him as soon as their sub-agents received the money; deciding, in fact, that the receipt of the sub-agents was, as between Mr. Mackersy and Messrs. Ramsays, the receipt of Messrs. Ramsays. In the course of giving judgment, Lord Cottenham said: 'From the time the bills were sent to the Pursuers the Appellant did not interfere. It was not intended that he should do so, nor indeed could he have done so, as none of the intended agents acted under his authority; he therefore had no control over them. All that Mackersy undertook to do by the bills has been accomplished'. Lord Campbell said: 'Mackersy could not have interfered with the money either in the hands of Alexander & Co or of Coutts & Co. There was no privity between him and either of those houses; but payment to Alexander & Co was payment to Coutts & Co., and payment to Coutts & Co was payment to Ramsays & Co.'

In the view which Lord Campbell entertained, no action could have been brought by Mr. Mackersy against either Coutts & Co or Palmer & Co, or Alexander & Co., there being no privity between him and them which would have entitled him to sustain it."(2)

Mr. Muthiah for BNP in his evidence said that the Plaintiffs were BNP's customers and the M C Bank their correspondents in Karachi. To quote him: "We were to act through our collecting agents in Karachi. We have no branches in Karachi. No branches in Pakistan. The Plaintiffs are our clients. We acted as the Plaintiffs' Agents for collection". Again "After the telex (dated May 25, 1977) to

the Muslim Bank (3AB96) we treated Habib Bank as our collection agents. Muslim Bank were out of the picture. After this the Habib Bank would take instructions from us. The Habib Bank would be entitled to a collecting fee". Under cross-examination he went on to say "so far as the Karachi people (meaning Habib Bank) are concerned they are to collect the bill on our behalf and they would not know of any arrangements with the drawers (Plaintiffs)".

The Plaintiffs themselves do not, in their evidence by their managing director, say that they either appointed or were parties to the appointment of the Habib Bank as their collecting agents in Karachi nor do they say that they were consulted or asked for their views by BNP on the appointment of the Habib Bank as collecting agents in Karachi.

On the Habib Bank's position as collecting bankers in this transaction Mr. Aley Abid, Head of the International Banking Department of the Habib Bank, had this to say in cross-examination: "We are not disputing that we were collecting agents for BNP until January 1, 1978. Commenced on May 17, 1977 (3AB92). This establishes contractual relationship between BNP and ourselves. We look to BNP for instructions and our responsibility is to them. We don't look to S S L as collecting agents. The M C Bank was used as a channel of communication between us and BNP ... We were also financing them (Silooka) as bankers. On this count we have a separate interest as financiers. Here we had a contractual relationship with S S L (Silooka) and Valibhoy (Plaintiffs). We have no other relationship with the Plaintiffs. We were the collecting agents for BNP in Karachi". The contractual relationship between the Habib Bank and the Plaintiffs that the witness was talking about was the Habib Bank's financial obligations to the Plaintiffs under the Letter of Credit while it was alive.

On the evidence before me, both documentary and oral, I find that the Plaintiffs were not parties to, nor did they have anything to do with, the appointment of the Habib Bank to act as collecting agents in Karachi in this matter. I also find that the appointment was made directly by BNP, the collecting bankers of the Plaintiffs in Singapore, without in any way consulting the Plaintiffs. I further find that so far as the Habib Bank were concerned they were acting to begin with on behalf of the M C Bank and thereafter from May 25, 1977 to January 1, 1978 on behalf of BNP and no other.

On the evidence before me the answers to questions (1), (2), (3) and (4) are in the affirmative while the answers to questions (5) and (6) are in the negative.

If I am right so far then it inevitably follows that, there being no privity of contract between the Habib Bank and the Plaintiffs, the Plaintiffs cannot sue the Habib Bank who are the sub-agents of BNP, the collecting bankers in Singapore and that therefore this action must stand dismissed. If the Habib Bank have breached their duties while acting as collecting agents on behalf of BNP (which is another matter) then it seems to me that the Plaintiffs' remedy lies against BNP, who themselves have a remedy over against the Habib Bank.

If, however, I am wrong in my perception of the facts and the law thus far and the Plaintiffs are rightfully pursuing the Defendants in their claim for damages for breach of contract then the question whether on the facts of this case the Defendants are in breach of their duties as collecting bankers has yet to be answered. And perhaps I should attempt to do this in the event of the Plaintiffs pursuing the matter further.

It is not disputed that the Vessel entered Karachi Harbour not under an approved letter of credit but on its "import will be treated as on collection basis and the remittances will be effected after obtaining our (State Bank's) approval and on submitting all the relevant import documents after the ship has arrived and cleared". (Letter of State Bank dated March 4, 1977 – 3AB72). The Vessel arrived at Karachi Harbour on May 8, 1977 and all concerned knew or ought to have known that Circular No. 10 of 1975 applied as the unserviceable Vessel had been brought in on a collection basis and not under an approved letter of credit for scrapping and that therefore compliance with its requirements was mandatory. The first requirement of the Circular was that "they (being importers/ship-breakers) should first obtain Government permission to purchase the said vessel ..." A number of other requirements are set out and the Circular further states the NOC (No Objection Certificate) for beaching/scrapping will not be issued by P.O. M M D if any of the stated requirements is not fulfilled. "All concerned are, therefore advised in their own interest to ensure submission of the above requirements in full so as to obtain NOC without delay". Such is the advice of the Circular.

In this connection I advert to the letters written by the Habib Bank both to the M C Bank on March 5 1977 (3AB74) and to BNP on May 17, 1977 (3AB91) wherein the reasons as to why a deposit of Pak rupees were suggested by them are set out. Reading Circular No. 10 of 1975 it seems to me clear that unless certain documents were produced and shown to the Authorities no Beaching Permission could have been obtained and if Beaching Permission had not been obtained then no Scrapping Permit can issue and if such issue does not take place then no Bill of Entry in respect of the Vessel could be obtained and if no Bill of Entry is obtained the State Bank would not permit the foreign exchange on the Bill to be remitted to New York or Singapore or anywhere outside Pakistan as the case may be.

So far as the obtaining of the Beaching Permission was concerned no documents were in fact released by the Habib Bank to anyone. The Bill of Sale (July 80, 1976) was produced and shown by Mr. Abid to the proper official. The document never left his possession. In the letter of June 25, 1977 (3AB100) giving Beaching Permission to Silooka it was expressly stated that the Vessel is not to be scrapped unless the original Bill of Sale and original Deletion Certificate of Port of Registry is produced. In these circumstances I find that the assistance given by the Habib Bank was not in breach of their duties as collecting agents. In fact the obtaining of Scrapping Permission was the first step in a series of steps which would eventually lead to the remittance of the face value of the Bill in US dollars to BNP who were payees under the Bill. The whole purpose of the transaction between the Plaintiffs and Silooka even before the Vessel had been bought by the Plaintiffs at Colombo was to get US currency out of Pakistan in exchange for the Vessel for scrapping purposes. At this stage of the proceedings I find that no documents had been delivered to anyone by the Habib Bank.

Another complaint against the Habib Bank is that some of the documents, namely original Bill of Sale dated July 30, 1976, original Amended Bill of Sale dated October 26, 1977, Memorandum of Agreement and copy of Invoice were sent without obtaining prior approval of BNP to Purbani Traders, the clearing agents of Silooka and kept by them from November 19, to December 18, 1977 and used by them for the purpose of getting customs clearance on the Vessel. Surely the answer to this complaint is contained in two letters, the one dated August 25, 1977 from the Habib Bank to BNP (3AB127) and the other, dated October 27, 1977 (3AB145) from BNP to the Habib Bank in reply to first mentioned letter. The first letter to BNP from the Habib Bank and copied to Silooka reads:

"This has a reference to your documentary remittance for US$383,130 dated February 1977 and your cable message of August 1, 1977. The contents of message were conveyed to our client but they are unable to make arrangements for remittance at the moment due to various procedural complications in clearance of ship.

We also wish to inform you that we are unable to make remittance without prior approval of our exchange control authorities. The control have expressed their inability to accede request of party for remittance in anticipation of clearance of vessel.

Trusting the above information will make your client satisfy.

Thanking you."

The second letter in reply to the Habib Bank by BNP and copied to the Plaintiffs reads:

"We acknowledge receipt of your letter dated August 25, 1977.

Enclosed herein is the amended Legal Bill of Sale as required by you. *Please forward it together with the other documents to the drawees and return the obsolete Legal Bill of Sale to us immediately.* (emphasis mine).

Kindly let us know of the outcome at your earliest."

To round matters off on this complaint by the Plaintiffs one has to look at a letter dated November 7, 1977 (3AB151) from Silooka to the Habib Bank and copied both to BNP and the Plaintiffs. It reads:

"We invite your attention to the letter dated October 27, 1977 addressed to you by the Banque National de Paris, Singapore and request you *not* to return the Legal Bill of Sale which was executed on July 30, 1976 by M/s A A Valibhoy & Sons (1907) Pte Ltd., Singapore, within the validity of Import Licence and L/C as the same would be required to be submitted by you to the State Bank of Pakistan at the time of obtaining their approval for remittance.

Thanking you."

One need hardly say any more on the complaints of the Plaintiffs with regard to the improper use of documents by the Habib Bank as collecting agents for BNP.

As to the Plaintiffs' allegation that the Defendants did not during the entire period May 25,

1977 to January 1, 1978 when they were acting directly as the collecting agents for BNP in Karachi except for one occasion on September 12, 1977 (3AB133), request of Silooka provisional Pak rupees deposit pending remittance. This is not entirely correct for the letter dated August 25, 1977 from Habib Bank to BNP (3AB127) makes it clear that BNP's cable message of August 1, 1977 to the Habib Bank which reads:

"Drawers request you to remit proceeds to New York within seven days under your cable advice to us or they will arrange to send captain and crew to take possession of the Vessel and bring her back to Singapore STOP Please treat this as urgent and cable compliance. Thanks"

was conveyed to the drawees, Silooka, by the Habib Bank. It was this letter which prevailed upon BNP to instruct the Habib Bank on October 27, 1977 (3AB145) to forward the Amended Bill of Sale, dated October 26, 1977 and the other documents to the drawees, Silooka. This being so it seems clear to me that BNP gave their consent to the release of the documents to Silooka because it had finally dawned on them that, as the import of the Vessel into Pakistan was being treated on a collection basis their then current instruction to the Habib Bank to deliver documents to Silooka strictly on payment of the Bill in Pak rupees was as impossible a task to carry out in Pakistan as had been the payment on the Bill under the Letter of Credit with its various conditions. In my view BNP allowed the release of the documents to Silooka in order to expedite the payment of the Bill in United States currency. But unfortunately whilst the import aspect of the Vessel was being considered by the Customs, other Pakistan authorities' suspicions were aroused on the probity of the sale of the Vessel. I do not find it possible to say that the Plaintiffs themselves were not responsible for the plight in which they then found themselves. And as for Silooka and their cynical disregard for truth in matters connected with the approval of foreign exchange for the purchase of the Vessel, the less said the better. I can see no way by which the court can assist the Plaintiffs in their claim and must therefore dismiss it with costs.

Claim dismissed.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

Appendix A

Habib Bank Limited
Safe Deposit Vault Branch
Abdullah Haroon Road
KARACHI/PAKISTAN

11th June 1976

Letter of Credit No 48552

M/s A A Valihboy & Sons (1907) Pte Ltd
51 Arab Street, Singapore 7

Dear Sirs

This is confirmation of documentary credit opened by Cable under today's date. It is only available for such amounts as has not already been availed of under such cable advise and may not be availed of at all unless attached to and as part of our correspondent's notification of such cable advice, the two jointly constituting evidence of the outstanding amount of this credit.

At the request of M/s Silooka Steels Limited, Carey Road, Off. Nishter Road Karachi/Pakistan. We hereby establish our confirmed irrevocable letter of credit in your favour for the amount of US$383,130 (U.S. Dollars Three lacs eighty three thousand one hundred and thirty only) C&F, available by your drafts on them at sight without recourse for full invoice value for delivery safely afloat and substantially intact at outer anchorage Karachi of an unserviceable ship for scrapping namely the vessel m.v. YANTI-Built in UK in 1951 – LDT 4267 – Price calculated @ US$.90/- per LDT (Light Displacement Ton), totalling US$.383,130/- delivery at Karachi harbour safely afloat as per contract between you and above importer dated May 6, 1976 accompanied by the following documents:–

1. Your signed invoices in octuplicate certifying that the said vessel is of U.K. origin and incorporating the particulars of the said vessel mentioned above showing Import Licence No. 612713 State Bank of Pakistan Registration No 05/76/501/054/743 and Approval No. IMPA 1688/1-208C dated June 11, 1976.

2. Legal Bill of Sale in favour of Habib Bank Limited A/C Silooka Steels Limited duly notarised and legalised by Pakistan Consul specifying that the Ship is being delivered free of all debts, encumbrances and maritime liens.

3. Original cable from Master of Vessel from Karachi Post Office confirming that the said

vessel m.v. YANTI – safely arrived outer anchorage Karachi not later than September 9, 1976 and that the notice of readiness has been tendered to openers.

4. Your certificate to the effect that you have cabled master of the vessel in Karachi as well as your representative in Karachi authorizing delivery of the above vessel M.V. Yanti physically to the Habib Bank Limited on condition, as she stands safely afloat and substantially intact during business hours of a working day. Your certificate that you have cabled Habib Bank Limited, Safe Deposit Vault Branch, Karachi confirming Authorisation sent to the Master of the Vessel.

5. Your undertaking to supply the certificate of deletion from the Lloyds Registry as soon as possible after delivery of the said vessel but not later than four months after the date of delivery of the vessel in Karachi.

6. Your written undertaking accepting full responsibility and or liability for any debts, encumbrances maritime and other liens and liabilities of every description whatsoever incurred up to the time of delivery and in no case the importers are responsible for those liabilities, if any.

7. Certificate from competent authority confirming that the sellers who have signed the Bill of Sale are the owners of the ship, m.v. YANTI.

8. Documentary evidence by way of original copy of builders letter or plan substantiating vessels light displacement of minimum 4267 long tons (excluding cement or non-metallic ballast).

9. A certificate of the Master of the Vessel to the Bank that he has arrived at Karachi outer anchorage and that the vessel is ready for delivery and on receipt of such information the Bank will instruct the correspondents bank in Singapore immediately to release the payment to the Beneficiary without any delay.

10. Sellers written undertaking that any further documents which may be required by the Buyers to comply with the Govt. of Pakistan Rules, will be provided as and when required and due diligence will be shown in Expediting submission of such documents.

This letter of credit is valid for negotiation not later than September 24, 1976.

Drafts must be marked 'Drawn under Habib Bank Limited Letter of Credit No 48552 and amounts thereof endorsed on this letter of credit by negotiating bank.

We hereby agree with drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this credit that the same shall be duly honoured on due presentation. This credit is subject to Uniform Customs and Practice for Documentary Credits (1974 Revision), International Chamber of Commerce, Publication No. 290.

Transmitted through HABIB BANK LIMITED, SINGAPORE who are authorised to negotiate your drafts on receipt of our cable authorisation.

11. Sellers written undertaking that the ship is free from Debts, Encumbrances, Maritime Liens and/or claims at the time of delivery of the Ship to the Buyers.

For Habib Bank Limited
S.D.V. Branch, Karachi

Sgd Sgd
Manager Officer

SINGAPORE BUILDING CORPORATION LTD. v. LEE SAE THUAN

[D.C.A. (Thean J.) March 2, 1984]
[Singapore – District Court Appeal No. 29 of 1982]

Landlord & Tenant – Rent-controlled premises – Claim for possession against tenant – Whether there was breach – Control of Rent Act (Cap. 266), ss. 4, 5, 15(1)(b) & 16(c).

The facts of the case were as follows. The appellants/plaintiffs were the owners of the premises and the respondent/defendant was the tenant thereof. The premises were rent-controlled within the meaning of the Control of Rent Act (Cap. 266). The respondent had been a tenant of the appellants since November 1975. Prior to that date, the premises were rented out to D.W.2 who had carried on thereat for about 30 years the business of a barber shop. In November 1975, for a sum of $20,000/- she assigned the tenancy of the premises to the respondent. The assignment was made informally with the permission of the appellants, but for obvious reason the payment of $20,000/- was not disclosed to the appellants.